

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JAMES BROOKNER,
Plaintiff,

v.

No. CV-10-639 CG/RLP

SSC Inc., *et al.*,

Defendants.

ORDER TO SHOW CAUSE

This matter comes before the Court *sua sponte* after the passage of more than 120 days from the filing of the complaint in this case. Having considered the pleadings of record, the relevant law, and otherwise being fully advised in the premises, this Court finds that Plaintiff has not yet properly served Defendant Evangeline Lujan-Vigil. Plaintiff James Brookner filed his complaint in Federal District Court on July 7, 2010. (Doc. 1). Plaintiff alleged claims against four defendants, including Ms. Lujan-Vigil. (*Id.*). Plaintiff then hired a private process server to serve the summons and complaint on Ms. Lujan-Vigil. (See Doc. 9 at 2). However, Plaintiff's process server was apparently unable to determine Ms. Lujan-Vigil's current address. (*Id.*). On July 14, 2010, the process server left an envelope containing the summons and complaint at an address which the server believed to be Ms. Lujan-Vigil's last known mailing address. (*Id.*). There is no indication that the envelope was given to a person, nor is there any indication that the process server mailed a copy of the summons and complaint. Therefore, the process server did not comply with any of the permissible methods for effecting service as listed in either Rule 4 of the Federal Rules of Civil Procedure or Rule 1-004 of the New Mexico State Court Rules. See Fed. R. Civ. P. 4(e); N.M. Ct. C.P.R. 1-004(F).

In light of this finding, the applicable law, and the Court's inherent power to regulate and properly manage its docket, promote judicial efficiency, and deter frivolous filings, see *Martinex v. IRS*, 744 F.2d 71, 73 (10th Cir. 1984), the Court hereby directs Plaintiff to show cause within fifteen (15) calendar days of the entry of this Order why this action should not be dismissed without prejudice pursuant to Fed. R. Civ. P. 41(b) for "failure of the plaintiff to prosecute or to comply with these rules or any order of court."

IT IS THEREFORE ORDERED that Plaintiff shall show cause within fifteen (15) calendar days of the entry of this Order why this action should not be dismissed without prejudice pursuant to Fed. R. Civ. P. 41.

A handwritten signature in black ink, appearing to read 'Carmen E. Garza', with a long horizontal line extending to the right.

THE HONORABLE CARMEN E. GARZA
UNITED STATES MAGISTRATE JUDGE